

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OHIO  
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,	)	CASE NO. 1:19-CV-145
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	MAGISTRATE JUDGE
	)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**RESERVATION OF RIGHTS OF FLAGLER MASTER FUND SPC LTD.  
REGARDING MOTION TO APPROVE SETTLEMENT AGREEMENT**

Flagler Master Fund SPC Ltd. (“Flagler”), by and through its undersigned counsel, hereby files this reservation of rights in response to the motion [Docket No. 82], as amended by Docket Nos. 85 and 118 (the “Motion”), of Mark E. Dottore (the “Receiver”), as Receiver for each of the Receivership Entities,<sup>1</sup> for entry of an order approving a settlement agreement (the “Settlement Agreement”) between the Receiver, as Receiver for each of the Receivership Entities, Studio Enterprise Manager, LLC, and Education Principle Foundation (collectively, the “Settlement Parties”) with respect to the matter captioned *Mark Dottore, Receiver v. Studio Enterprise Manager, LLC, et al.*, Case No. 1:19-cv-380 (N.D. Ohio 2019).

Flagler is an investment fund managed by Candlewood Investment Group, LP (“Candlewood”). Flagler is a secured lender to the Receivership Entities and is a beneficiary of valid liens on substantially all of the material assets of the Receivership Entities, including the “Shared IT assets” referenced in paragraph 8 of the Settlement Agreement. Flagler is also a

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Order Appointing Receiver* [Docket No. 8] (the “Initial Receiver Order”), as clarified, *nunc pro tunc* to entry of the Initial Receiver Order, pursuant to the *Order Clarifying Order Appointing Receiver* [Docket No. 14] (the “Clarifying Order”) (the Initial Receiver Order, as clarified by the Clarifying Order, and as such order may be further amended or clarified or modified, the “Receiver Order”).

secured lender to South University—which is one of the two university systems that were spun off from Dream Center pursuant to the January 7, 2019 transaction.

Flagler and Candlewood understand that the ability of South University to provide education services to approximately 10,000 university students depends on its continued access to the Shared IT assets. As originally presented to the Court, the Settlement Agreement would have authorized a future disposition of the Shared IT assets without adequate protections for South University or the secured lenders. Accordingly, since the filing of the Motion, Flagler and Candlewood have been engaged in discussions with the Settlement Parties regarding the terms of the Settlement Agreement. Those negotiations resulted in the modification to the Settlement Agreement reflected in that certain *Second Amendment to the Settlement Agreement* (the “Second Amendment”), which was attached as Exhibit A to the *Supplement to Motion to Approve Settlement Agreement* [Docket No. 118], filed on March 7, 2019, and is incorporated as if fully set forth herein.

But for the agreement of the Settlement Parties to enter into the Second Amendment, Flagler would have objected to the Motion and to approval of the Settlement Agreement, and the Second Amendment resolved Flagler’s informal objection thereto. For the avoidance of doubt, Flagler believes that all future modifications to the Settlement Agreement or the Second Amendment must be approved by this Court after notice and an opportunity for Flagler and the other secured lenders to object. Flagler hereby reserves all of its rights, including its right to object, in the event that any Settlement Party seeks to amend or modify the terms of the Settlement Agreement or the Second Amendment without the express written consent of Flagler. Moreover, the Settlement Agreement requires the Receiver to seek subsequent Court approval of any sale of the Shared IT assets and Flagler hereby reserves all of its rights with respect to any such sale.

Dated: March 8, 2019

Respectfully submitted,

/s/ Jeffrey A. Lipps

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